for The Defense

The Training Newsletter for the
Maricopa County Public Defender's Office

Volume 3, Issue 7 -- July 1993

Dean W. Trebesch,
Maricopa County Public Defender

Contents:

Videotaping Interrogations & Confessions

By Christopher Johns

Continued Use of Psychological Coercion

It is no secret. Standard interrogations by Arizona law enforcement officials are under national scrutiny. Several high profile cases in Phoenix demonstrate that even "innocent" suspects may confess when subjected to psychological coercion.

Despite the U.S. Supreme Court's 1966 decision to require *Miranda* warnings, that was based in part on the recognition that sophisticated psychological interrogation techniques may coerce confessions even in the absence of physical torture, many of the same practices continue. Now a research brief by the National Institute of Justice substantiates that videotaping confessions is clearly favored for interrogations of certain felonies.

The research project is based on interviews of detectives, police supervisors, prosecutors, public and private defense attorneys, and judges in 11 diverse locations (none in Arizona). On the basis of a survey, researchers calculated that one-third of all American police and sheriffs' departments serving populations of 50,000 or larger are in fact videotaping at least some interrogations.

The research also found that in 1990 police videotaped suspects' statements in an estimated 57,000 criminal cases. The most frequently videotaped cases were homicides. Reasons given for videotaping include:

*Avoiding defense attorneys' challenges of the accuracy of audiotapes and the completeness of written confessions.

*Helping to reduce doubts about the voluntariness of confessions.

*Jogging the memories of detectives for testifying.

*Countering defense criticism of "nice guy" or "softening up" techniques for interrogating suspects.

Those police agencies resisting videotaping argue that suspects will not confess as freely, that videotaping is costly, and that they may have to videotape *all* confessions in order to avoid criticism from defense attorneys. Additionally, many defense attorneys interviewed opted for full videotaping instead of summaries as some police agencies have done. Issues also arise over whether videotaping should be conducted openly or surreptitiously as some police agencies have done. Practitioners should be aware, however, that state and federal law may bar surreptitious recordings. At the very least, covert taping hardly squares with an image of fairness that some police agencies attempt to portray.

(cont. on pg. 2)

Defense Attorney View

Not surprisingly, some defense attorneys are opposed to videotaping on the grounds that it denies them a strategic edge. In their view, written or even audiotaped confessions are easier to attack. On the other hand, many see that the image of the accused, for example, with clothing torn in a confrontation with an alleged victim, may substantiate a self-defense claim. Others also note that the picture of how the client handled himself may give clues to the accused's effectiveness as a witness. "Client control" is also seen as a benefit, since counsel could cut through issues as to whether the confession was made.

Consensus Favoring

The consensus is that videotaping is effective, both for the prosecution and for the defense. Videotapes may help accuracy in assessing guilt or innocence, and may foster the accused's humane treatment. A striking 97 percent of all departments that have ever videotaped statements continue to find it, on balance, to be useful.

Can Practitioners Use the Information

Until such time as Arizona police agencies use videotaping, practitioners may find the report a useful strategic tool in cases. Sending the report to the case agent and later interviewing him or her on the subject with an eye to cross-examination may further cast doubt on an alleged confession. An entire line of questioning may be developed about why the confession was not videotaped, given its acceptance by many major police departments.

The fact that the report was underwritten through the auspices of the U.S. Department of Justice gives it additional credibility. The report also contains a graph that shows that no police agency surveyed found that videotaping hindered guilty pleas. Further, a whopping 59 percent of agencies surveyed reported that they strongly approved of its use once the program was started.

Copies of the research brief are available from the *Training Division* by contacting Heather Cusanek (506-8200). The full report, entitled *Police Videotaping of Suspects Interrogations and Confessions: A Preliminary Examination of Issues and Practices,* may be obtained from the National Institute of Justice/NCJRS, Box 6000, Rockville, MD 20850 by requesting NCJ No. 139584. The report also is available from the Police Executive Research Forum, 2300 M Street NW., Ste. 910, Washington, DC 20037 (202) 466-7820.

Additionally, other law reform groups advocate audio or video recording. To date, however, only Alaska has instituted a rule for audio recording. Failure to do so in Alaska may result in the confession being suppressed.

FOR THE DEFENSE

Editor: Christopher Johns, Training Director
Assistant Editors: Georgia A. Bohm and Heather Cusanek
Appellate Review Editor: Robert W. Doyle
DUI Editor: Gary Kula

Office: (602) 506-8200
132 South Central Avenue, Suite 6
Phoenix, Arizona 85004

FOR THE DEFENSE is the monthly training newsletter published by the Maricopa County Public Defender's Office, Dean Trebesch, Public Defender. **FOR THE DEFENSE** is published for the use of public defenders to convey information to enhance representation of our clients. Any opinions expressed are those of the authors and not necessarily representative of the Maricopa County Public Defender's Office. Articles and training information are welcome and must be submitted to the editor by the 10th of each month.

Practice Issues

AACJ Grand Jury Abuse Investigation

The Arizona Attorneys for Criminal Justice (AACJ) are investigating allegations of Grand Jury abuses on a broad scale. Specifically, they are focusing on abuses where grand juries indict on the most serious degree of an offense without inquiry or clarification of offenses of the same nature or lesser degree.

Further, AACJ is investigating grand jury indictments that fail to examine any direct evidence linking the accused to a specific crime. Moreover, juvenile cases where evidence was lacking and a motion to remand was granted are being reviewed. If practitioners have handled or are aware of such cases, please contact Geoffrey Jones, Chair AACJ Committee on Grand Jury Abuse, 111 West Monroe, Suite 1212, Phoenix, Arizona 85003.

(cont. on pg. 3)

Rule 11 Time Limits

An issue often confronting practitioners is what time period is excluded when a client undergoes a Rule 11 examination. Is time excluded from the date the motion is filed or when it is granted? Also, does the so-called "pre-screening" motion toll the time requirements of Rule 8? What if the state files a Rule 11 motion?

The un-codified practice of a "pre-screen" is only one factor on which the trial court should rely.

Arizona trial courts may not proceed against an accused who is "unable to understand the proceedings against him or to assist in his own defense." Rule 11.1. *Any party may request a competency examination if a defendant appears incompetent.* Rule 11.1. If the trial court determines that *reasonable grounds* exist for an examination, at least two mental health experts are appointed to examine the accused. Rule 11.3. Prior to making a determination whether reasonable grounds exist, trial judges may order a preliminary evaluation of the accused, commonly referred to in Maricopa County as a "prescreen". *See, e.g., State v. Johnson*, 147 Ariz. 395, 398-99, 710 P.2d 1050, 1053 (1985). The U.S. Supreme Court has held that failure to make a competency determination when reasonable grounds appear is fundamental error. *Pate v. Robinson*, 383 U.S. 375 (1966).

Generally, every defense delay is excluded from the time provisions of Rule 8. What if the state files the motion? Several Arizona appellate decisions suggest that the entire period of delay caused by a mental health examination and hearing to determine competency are excludable from speedy trial computation. And, in *State v. Starcevich*, 678 P.2d 959 (1983), Division Two of the Arizona Court of Appeals held that even delay occasioned by the state's Rule 11 motion is a delay occasioned on behalf of an accused and is excluded under Rule 8.4(a).

Instead of the hearing date (on whether reasonable grounds exist) initiating excludable delay, Arizona cases suggest that time is excluded from the day the motion is filed. In *State v. Brown*, 656 P.2d 1261 (1982), Division One, of the Arizona Court of Appeals noted that a "reasonable excludible delay is from the time of filing the motion to a reasonable time after the determination of competency is made." *See also, State v. Sutton*, 553 P.2d 1216 (1976)(*time period excluded from speedy trial time limits for delays resulting from motion to remand runs from date of filing of motion*). A more explicit statement is found in *State v. Landrum*, 544 P.2d 664 (1976). There the Arizona Supreme Court held that "since the filing of the motion under Rule 11 effectively stops or suspends the trial" the date of filing tolls the running of Rule 8. "This court has held that the time period from the date the motion was made or filed until the date upon which the matter is determined should be excluded from the total time." *Id.*

Rule 11 "Reasonable Grounds"

Another issue for practitioners is whether the so-called pre-screen is the final determination of whether reasonable grounds exist for a full Rule 11 motion. The answer is no. The issue was directly addressed in *State v. Borbon*, 706 P.2d 718 (Ariz. 1985). Reasonable grounds exist for a full Rule 11 proceeding when there is sufficient evidence to show that the accused is unable to understand the nature of the proceedings against her and cannot assist in her defense. The nature of the evidence should create a doubt in the trial court's mind as to competency. The un-codified practice of a "pre-screen" is only one factor on which the trial court should rely. The trial judge should "be careful that this preliminary hearing [pre-screen] does not become a determination of competency itself." The pre-screen does not mean that it suffices as exclusive evidence for whether a full Rule 11 should be granted. Trial counsel still may seek to present further evidence, in the form of a hearing, to controvert or augment the pre-screen finding. As the *Borbon* opinion notes, "[i]t is the trial judge who must determine if reasonable grounds exist for the hearing [Rule 11] and the record should make it clear that is the case."

Confrontation Clause Objections

Examining witnesses is at the heart of trial work, and Arizona's Victims' Rights laws hamper this important element of presenting the accused's case fairly to the jury. Pretrial interviews are now a rarity, and preparing for effective cross-examination is minimized. Reviewing *Pennsylvania v. Richie*, 480 U.S. 39 (1987), however, may still be important prior to cross-examination of alleged victims. In *Richie*, the U.S. Supreme Court held that an accused was entitled to have Pennsylvania Children and Youth Services files of an alleged sexually abused child reviewed by the trial court to determine whether they contained information that would have changed the outcome of the trial. Although the court refused to recognize a right to production of the materials pretrial, it reiterated important Sixth Amendment issues for trial counsel.

First, the Confrontation Clause provides two types of protection: the right to physically face those testifying against the accused, and the right to conduct effective cross-examination. The right to cross-examine includes the opportunity to show that a witness is biased, or that testimony is exaggerated or unbelievable. While the Confrontation Clause is not a constitutionally compelled rule of pretrial discovery, it is designed to prevent improper restrictions on types of questions that defense counsel may ask during cross-examination.

While employing a due process analysis, and not deciding the Confrontation Clause aspect of exculpatory information, the Court noted that, "[i]t is well settled that the government has the obligation to turn over evidence in its possession that is both favorable to the accused and material to guilt and punishment." Evidence is "material...if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different."

In *Richie* the Court ordered that the accused is entitled to "have the [CPS] file reviewed by the trial court to determine whether it contains information that probably would have changed the outcome of the trial."

(cont. on pg. 4)

Additionally, for practitioners with an eye to the future, Justice Blackmum's concurrence expresses language that defense counsel may want to include in any record for appeal. According to Justice Blackmum, "[i]n my view, there might well be a confrontation violation if, as here, a defendant is denied pretrial access to information that would make possible effective cross-examination of a crucial prosecution witness."

Practitioners may want to routinely and vigorously insist on obtaining any and all records from the prosecution regarding alleged victims, including CPSrecords, school records, arrest records, and interviews with victim/witness advocates, making the appropriate record when denied. *See also, State Ex Rel Romley v. Superior Court (Roper)*,836 P.2d 445 (1992).

Reverse Batson

In *Georgia v. McCollum*, 112 S.Ct. 2348 (6/18/92), the Supreme Court held that the Fourteenth Amendment's Due Process Clause forbids a defendant or his attorney from using peremptory challenges to racially discriminate by striking a potential juror solely on the basis of race. If the state demonstrates a *prima facie* showing of discrimination by the defendant, the accused must articulate a racially neutral reason for the peremptory challenge. For purposes of the decision, public defenders were determined to be "state actors." Practitioners may want to contact Mara Siegel for developing strategies to effectively rebut government claims of striking particular jurors.

Issue of Disqualification Motions Referred to State Bar

On June 10th, the Maricopa County Superior Judges submitted a petition to the Arizona Supreme Court to completely rewrite the imputed disqualification standard of the Rules of the Professional Conduct provided for in ER 1.10. Our office filed an official response disputing some of the claims of the petition and noting that "lowering" public defender ethics ill-serves the public and undermines client confidence in our representation. The Office response also stressed that the Professional Conduct Rules serve clients, and that "screening" ultimately will lead to numerous appellate claims of divided loyalties undermining effective representation of counsel. Screening, a controversial procedure disapproved by the Arizona State Bar, occurs where attorneys are ordered not to discuss or review cases handled by other attorneys in the office.

As the Office response notes, "[t]he treatment of the Public Defender's Office as a firm is a modern reality based on authority and reason that insures conflict-free counsel. It eliminates needless appellate and post-conviction review that will arise if the proposed rule change is adopted. In our view, under the proposed rule, repeated claims will arise that counsel obtained confidential information or had divided loyalty."

After a closed conference by the Arizona Supreme Court on July 8th, the Court referred the petition to the Criminal Justice Section and Criminal Rules Committee of the State Bar for further study. Recommendations are to be returned to the Supreme Court by September 22nd.

The petition is based on a concept, untried in any other jurisdiction, that would force screening of cases on a mass scale in all Arizona public defender offices. The petition essentially argues that public defender offices should be treated as government agencies instead of as "firms." The Arizona State Bar, however, has repeatedly noted that public defender offices should be treated as firms for purposes of disqualification motions. *See, e.g. Opinion No. 89-08.* In fact, in May the State Bar ethics committee issued Formal Opinion No. 93-06, that unequivocally rejects "screening" as a method to eliminate conflicts. The opinion notes that:

> Persons charged with crime must have ultimate faith in their attorney and such faith may be slow to develop when the attorney is court-appointed .... Without faith in counsel, the criminal defendant may not freely communicate information necessary to an adequate defense.

The opinion also rejected the notion that a public defender's office could create its own conflicts division, noting that "[it] is possible the County could accomplish its objective by establishing a separate office, with no ties to the Public Defender, to handle conflict cases." A few Arizona counties have already employed this method to handle conflicts of interest, most notably Pima County.

The Office response also stressed that the Professional Conduct Rules serve clients, and that "screening" ultimately will lead to numerous appellate claims of divided loyalties undermining effective representation of counsel.

The Office also has created its own committee, appointed by Dean Trebesch, to study how conflicts are handled within the Public Defender's Office and to make recommendations that may ultimately serve as guidelines for assessing disqualification motions. The committee, chaired by Tom Klobas, Trial Group D Supervisor, is composed of Assistant Public Defender Bob Briney; Trial Group B Coordinator Bob Doyle; and Training Director Christopher Johns. Comments and suggestions are welcomed by committee members. If readers have not already received copies of the proposed rule, the Office response or State Bar Opinion 93-06, they are available by contacting Heather Cusanek of the Training Division (506-8200).

CJ

The Latest News from Juvenile

by Helene Abrams

Procedural and personnel changes abound in our juvenile division. In January of this year, Mr. Trebesch selected a new juvenile division chief, me. The baton was passed on February 22, 1993. Richard Rice, our long-term leader, was selected to head up our expanding, by necessity, mental health unit. Chris Phillis, our former law clerk and extern, replaced Anne Aberbach in our Durango division. Ms. Aberbach is now a clinical professor at ASU. Susan Heiler transferred from Group C to our SEF unit. Susan White returned to the office from North Carolina and is also in our SEF unit. Michelle Lue-Sang returned to us from the Attorney General's Office. She will be training with my SEF supervisor, Margaret Morse, who asked to return to regular duty. Marcia Wiley and Carol Miller also have joined our Durango staff. Richard Gissel joined our SEF investigation staff.

Implementation of new Rule 3, Arizona Rules of Juvenile Court, dealing with weekend and holiday advisory hearings, went into effect the weekend of June 26-27. Instead of two hearings per day, one hearing, beginning at 1:00 p.m., is held. The hearings are held at the Durango facility. In order to comply with our appellate court's ruling in *JV-111701 v. Superior Court*, 163 Ariz. 147, 786 P.2d 998 (App. 1989) (briefed and argued by Ellen Katz) and the dictates of *Riverside v. California*, the county attorney must file a petition within 24 hours of the detention of a juvenile and a probable cause hearing must be held within 24 hours of the filing of the petition. This is *NOT*, nor is it intended to be, a 48-hour rule. In reality, most of our clients are in court for their probable cause hearings within 24 hours.

On to an even more pleasant point. The Durango unit should be moving into their new "digs" in December. Our new offices will be located just north of the Social Services building where the Highway Department used to be, (about 32nd Avenue). Plenty of space for all of us -- and restrooms, too. Only minutes from the court center.

We are not having much luck finding space for our SEF unit. We have outgrown the space in the court building. There is not much unoccupied space within walking distance of the court.

Good luck to David Katz who will represent our office on Justice Feldman's Commission on Juvenile Justice in Arizona. Dave's special interest in and knowledge of the "automatic transfer" issue make him an important spokesperson for us. Barbara Cerepanya and Anne Aberbach, both former public defenders, are also on the Commission.

Our attorneys are doing an impressive job -- both in trial and pretrial. In May, we won 50% of our trials and had 134 cases dismissed.

Some significant issues are being litigated in the appellate courts. The Court of Appeals "Order" in the Tomassoni case could cripple the juvenile court. While we believe the court's order has no precedential significance, we are fearful (as are the judicial officers and the county attorneys) that parents will be able to "trump" plea agreements reached by us and concurred in by our clients. Just who has the final say in whether a plea agreement should be entered into? Is it our client, with advise of counsel, who ultimately suffers the consequences of the adjudication, including possible lock-up, or the child's parent, who, in this case, is a potential witness for the state, has conflicting interests because he is the father of both daughters accused of the murder, is the husband of the victim, and probably has other yet-undisclosed conflicts? The removed-by-the-Court-of-Appeals guardian ad litem has filed a petition for review with the Supreme Court. Amanda McGee is also filing a Petition for Review of the Court of Appeals order. She will attempt to consolidate the petition for review with the guardian ad litem's petition. We are still extremely concerned that the real loser here is the eleven-year-old who languishes in detention waiting for the treatment she desperately needs. It does not appear that dad, or his former counsel, cares what impact this legal delay has on this fragile child.

We also are waiting for a decision on an appeal filed by the state which argued that the court erred in dismissing a case with prejudice when the state failed to provide proof of service on several of their witnesses. The state finally admitted, after several delays, that they merely mailed subpoenas to the witnesses and, therefore, they could not demonstrate return of service. David Katz argued that the dismissal with prejudice was justified in these circumstances.

Suzette Pintard took over an appeal filed by Anne Aberbach concerning whether a juvenile may be ordered to pay restitution for an offense he did not plead to nor agree to pay for. Oral argument was granted.

Don't be strangers. Come visit anytime. Don't forget to *call* us if you represent a client who was transferred to adult court. The attorney in juvenile may provide insights and ideas. Their files (which you should get) are a wealth of information.

June Jury Trials

May 22

David Brauer: Client charged with kidnapping. Trial before Judge O'Melia ended June 3. Client found guilty. Prosecutor Thackeray.

May 26

Joseph Stazzone: Client charged with aggravated DUI. Trial before Judge de Leon ended June 3. Client found guilty. Prosecutor Manjencich.

June 1

James Cleary: Client charged with burglary with two priors and while on parole. Investigator H. Brown. Trial before Judge Colosi ended June 4. Client found **not guilty**. Prosecutor Brnovich.

(cont. on pg. 6)

Reginald Cooke: Client charged with possession of narcotic drugs with priors. Trial before Judge Cates ended June 3. Client found guilty. Prosecutor Armijo.

Dave Fuller: Client charged with theft. Investigator G. Beatty. Trial before Judge Roberts ended June 8. Client found guilty. Prosecutor Windtberg.

David Goldberg: Client charged with possession of narcotic drugs, and possession of drug paraphernalia with two priors. Trial before Judge Seidel ended June 2 with a mistrial. Prosecutor Troy.

June 2

Brad Bransky: Client charged with four counts of aggravated assault. Investigator H. Schwerin. Trial before Judge Cole ended June 10. Client found **not guilty**. Prosecutor Charnell.

Kevin Burns: Client charged with aggravated assault. Investigator J. Allard. Trial before Judge Gerst ended June 4. Client found **not guilty**. Prosecutor Puchek.

Jerry Hernandez: Client charged with aggravated assault (dangerous) and four counts of endangerment (felonies). Trial before Judge Sheldon ended June 10. Client found guilty of aggravated assault and four counts of lesser-included misdemeanor endangerment. Prosecutor Baker.

Slade Lawson: Client charged with sexual conduct with a minor. Investigator G. Beatty. Trial before Judge Sheldon ended June 9. Client found **not guilty**. Prosecutor Macias.

Leslie Newhall: Client charged with theft and possession of drug paraphernalia. Investigator C. Yarbrough. Trial before Judge Brown ended June 7. Client found guilty on possession of drug paraphernalia. Theft charge dismissed with prejudice. Prosecutor Blomo.

June 3

Cecil Ash: Client charged with second degree murder and manslaughter. Investigator R. Thomas. Trial before Judge Grounds ended June 15. Client found **not guilty** on second degree murder charge, and guilty on manslaughter. Prosecutor Baker.

June 7

Paul Ramos: Client charged with two counts of aggravated DUI. Trial before Judge Hendrix ended June 9. Client found guilty. Prosecutor Smyer.

June 8

Robert Billar: Client charged with DUI. Trial before Judge Jarrett ended June 14. Client found guilty. Prosecutor Wales.

Daniel Carrion: Client charged with aggravated assault (dangerous). Trial before Judge Bolton ended June 14. Client found **not guilty**. Prosecutor McCormick.

Susan Corey: Client charged with aggravated DUI. Investigator C. Yarbrough. Bench trial (submitted on DR) before Judge Hertzberg ended June 8. Client found guilty. Prosecutor Kane.

Gary Hochsprung: Client charged with five counts of child molestation. Trial before Judge Ryan ended June 16. Client found guilty. Prosecutor J. Garcia.

Kevin White: Client charged with burglary. Investigators V. Dew and R. Thomas. Trial before Judge Roberts ended June 16. Client found **not guilty**. Prosecutor Hamm.

June 9

James Likos: Client charged with aggravated assault. Trial before Judge O'Melia ended June 15. Client found guilty. Prosecutor Johnson.

June 14

Elizabeth Feldman and Larry Grant: Client charged with possession of marijuana. Investigator R. Gissel. Trial before Judge Trombino ended June 18 with a hung jury. Prosecutor Parks.

Lisa Gilels: Client charged with burglary with four priors. Investigator D. Beever. Trial before Judge Dougherty ended June 17. Client found guilty with two priors. Prosecutor Amato.

Catherine Hughes: Client charged with robbery. Trial before Judge Seidel ended June 15. Client found **not guilty**. Prosecutor Hinz.

Rickey Watson: Client charged with theft. Trial before Judge Kauffman ended June 17 with a judgment of acquittal. Prosecutor Krabbe.

June 15

Robert Billar: Client charged with child abuse (dangerous). Trial before Judge Anderson ended June 22. Client found guilty. Prosecutor Schroeder-Nanko.

David Brauer: Client charged with armed robbery. Trial before Judge Schneider ended June 21. Client found guilty. Prosecutor Sanders.

Donna Elm: Client charged with misdemeanor DUI with two priors. Trial before Judge Johnson ended June 17. Client found **not guilty**. Prosecutor Drexler.

Rena Glitsos: Client charged with armed robbery. Investigator M. Fusselman. Trial before Judge Bolton ended June 21. Client found **not guilty**. Prosecutor Schwartz.

(cont. on pg. 7)

Scott Halverson: Client charged with fraud. Trial before Judge Grounds ended June 16 with a mistrial. Prosecutor Miller.

Joseph Stazzone: Client charged with aggravated assault (dangerous). Investigator A. Velasquez. Trial before Judge de Leon ended June 17. Client found guilty. Prosecutor Harris.

June 16

Rebecca Potter: Client charged with aggravated robbery. Investigator H. Schwerin. Trial before Judge Ryan ended June 17. Client found **not guilty**. Prosecutor Kane.

Louise Stark: Client charged with three counts of armed robbery, and one count of theft. Trial before Judge Dann ended June 30. Client found guilty. Prosecutor Levy.

Jeanne Steiner: Client charged with aggravated DUI. Investigator R. Gissel. Trial before Judge D'Angelo ended June 17 with a hung jury (6-2 for not guilty). Prosecutor Ainley.

June 17

Daniel Carrion: Client charged with possession of narcotic drugs. Bench trial before Judge O'Melia ended June 17. Client found guilty. Prosecutor Johnson.

Elizabeth Langford: Client charged with aggravated assault (dangerous), two counts of endangerment, two counts of DUI, and manslaughter (dangerous). Investigator G. Beatty. Trial before Judge Grounds ended June 28. Client found guilty. Prosecutor Baker.

June 21

Marie Farney: Client charged with possession of dangerous drugs (methamphetamine). Investigator D. Beever. Trial before Judge Hilliard ended June 22. Client found **not guilty**. Prosecutor Mann.

Jerry Hernandez: Client charged with aggravated assault and misconduct involving a weapon. Investigator R. Thomas. Trial before Judge Hendrix ended July 1. Client found guilty. Prosecutor Miller.

June 22

Daniel Carrion: Client charged with armed robbery (dangerous and while on parole). Trial before Judge Bolton ended June 30. Client found guilty. Prosecutor Yares.

June 26

Brad Bransky: Client charged with aggravated assault. Investigator J. Allard. Trial before Judge Brown ended June 27 with a hung jury. Prosecutor Charnell.

June 29

James Cleary: Client charged with three counts of sexual abuse. Investigator D. Beever. Bench trial before Judge Hertzberg ended June 30. Client found guilty. Prosecutor Amato.

Joseph Stazzone (advisory counsel): Client charged with burglary with one prior. Trial before Judge O'Melia ended July 1. Client found guilty. Prosecutor Tucker.

June 30

William Peterson: Client charged with two counts of possession of narcotic drugs (cocaine and heroin). Trial before Judge Hotham ended July 2. Client found guilty. Prosecutor Davis.

June Sentencing Advocacy

PEGGY SIMPSON, Client Services Coordinator (CSC): Client had a prior felony conviction for robbery. He was granted probation which later was revoked and the client sentenced to seven years prison. For the current offense of armed robbery (a class 2 felony), the presentence report recommended the presumptive term. The client was screened over the phone by Amity. He was sentenced to five years IPS with eight months jail, to be released when a treatment bed at Amity becomes available. The judge specified "Amity" as a term of probation. Attorney: Constantino "Tino" Flores.

PEGGY SIMPSON, Client Services Coordinator: Client had two prior felony convictions, a probation revocation and a prison term. He was on release status after committing a new offense when he committed yet another felony. The presentence report recommended the presumptive term. The state asked for an aggravated term. CSC had client screened for Teen Challenge and gave an oral report at sentencing. The client was sentenced to IPS with treatment at Teen Challenge stipulated by the judge. Attorney: Darius Nickerson.

Mental Health Division Successful In Appeal

As most practitioners know, the Office is responsible for representing individuals whom the state attempts to involuntarily commit for mental illness. In recent years the legislature has expanded the grounds for commitment to include persons who are "persistently or acutely disabled." Under this new standard, the hospital must prove, among other things, that the advantages and disadvantages of treatment are discussed with the prospective patient, a statutory requirement that the hospital has seldom performed. See A.R.S. § 36-501(239)(b). In Arizona a mentally ill person cannot be involuntarily confined just because he or she is mentally ill.

The enactment of this new statutory ground has increased the caseload of our mental health division, which recently has been expanded to include a new division head, Dick Rice, the addition of a part-time attorney, Connie Leon, a full-time attorney, Mary Miller, and a clinical social worker, Julie Beren.

The new standard for commitments has been of special concern to mental health practitioners because of the lax standards the state has been able to use to successfully commit individuals. In *Re: Application for the Commitment of an Alleged Mentally Disordered Person MH 91-00558*, Mental Health Division attorney Jodi Weisberg made the first successful challenge of the hospital's failure to adhere to the statutory provisions. In this case our client was taken into custody for an Involuntary Evaluation pursuant to A.R.S. § 36-524. Later a petition was filed for Court-Ordered Treatment alleging that the client suffered from a mental disorder and was a "*danger to self or persistently or acutely disabled and in need of treatment.*"

In the subsequent hearing, defense counsel established that the hospital had failed to comply with the standards necessary to show a persistently disabled condition. Through cross-examination, counsel demonstrated that the hospital doctors never attempted to discuss with the client the disadvantages and advantages of various treatments. To the contrary, the doctors testified there were no options available, despite the fact that guardians of the client offered alternatives to hospital-confined treatment. Moreover, doctors must also explain, as part of the statutory criteria, why a specific patient cannot understand treatment options if that is their claim.

Although at the hearing the client lost, Mental Health Division attorney Jodi Weisberg filed an appeal that reversed the hearing officer's findings.

CJ ^

Attorney Training Update

Office-Sponsored Seminars

The Office is planning three statewide seminars for this fall. On September 24, the Office will sponsor a cultural diversity/client relations seminar. Topics will include dealing with clients from different racial and ethnic groups, as well as clients with physical or mental impairments. More information will be circulated in August. The seminar will be held in the Maricopa County Board of Supervisors Auditorium.

On October 22, the Office will sponsor a seminar on trial practice issues. Andrea Lyon, Director of the Illinois Capital Representation Project and a National Criminal Defense College (NCDC) faculty member, will be one of several featured speakers. This presentation will be held at the Holiday Inn Crowne Plaza.

On December 3, the Office will sponsor a seminar on the new criminal code revisions that become effective January 1, 1994. This seminar will cover the major substantive changes to the law, the new sentencing structure, and the computations for the "truth-in-sentencing" provisions. Faculty members will be announced at a later date. The seminar will be held in the Maricopa County Board of Supervisors Auditorium.

Criminal Code Implementation Presentation

On November 17 (tentative date), the Arizona Supreme Court and numerous other criminal justice agencies, including our Office, will sponsor a satellite-transmission seminar on the new criminal code provisions. The Training Division will provide further details on this presentation when more information becomes available.

NCDC Presentations

The National Criminal Defense College will sponsor two programs in addition to their annual trial college. On October 1-3, 1993, an "Advanced Cross-Examination" seminar will be held in Atlanta. And on January 14-16, 1994, there will be a "Theories & Themes" program at the same location.

The Office will be able to send a limited number of attorneys to each program. A sign-up sheet will be circulated in mid-August for attorneys who wish to be considered for attendance. Priority will be given to attorneys who have never attended an out-of-state presentation since joining the Office.

New Attorney Training Program Completed

On July 9, the Office's Training Division completed a three-week initial training program for 13 attorneys who recently joined the Public Defender's Office. In addition to lectures on substantive law, practice preliminary hearings and cross-examination exercises, the new attorneys participated in a mock-jury trial. Various staff and lawyers acted as witnesses and judges. Eighteen superior court staff members (including clerks, bailiffs, and court reporters) served as jurors. The new attorneys received a certificate of completion, as well as over 45 hours of CLE.

The new attorneys will continue to receive periodic training sessions during their probationary period, as well as hands-on mentoring from the trial group coordinators. Substantive presentations are open to all attorneys, and further information on future training sessions will be available from trial group coordinators in the next few weeks. ^

BULLETIN BOARD

Speakers Bureau

Helene Abrams and Michelle Lue Sang recently joined our Speakers Bureau.

Tom Timmer talked to a sixth-grade class at Sequoya Elementary School on April 20 as part of the "Respect for Law" program. The students sent Tom thank you letters that included the following comments (quoted precisely as written):
"I never knew the Miranda Rights were so important."
"I also learned that there is a lot of school to go through before becoming an attorney. . ."
"One of the things I learned was that if a policeman doesn't read you your rights after being arrested, you can be set free."
"I learned that a juvenile can go to prison and get tereated like an adalt. If I get in trobal I will ask for you."
"I can't understand English, so, I don't know, what you talk about, but Thank You coming to school."

On July 8, Michelle Lue Sang spoke to a class of 9th graders at a summer school in Mesa. Michelle discussed juvenile law and the juvenile court system.

Russ Born addressed a class of gifted students (11 - 13 years of age) at Glendale Community College on July 19. Russ talked about courtroom procedure, case preparation and the trial process.

Training

DUI -- On August 11, Gary Kula, a Deputy Public Defender since 1989 and a recognized authority on DUI's, will conduct support staff training on "DUI versus Responsible Drinking." He will discuss the law, and the defenses and consequences of DUI's. The seminar will be held from 2:00 - 4:00 p.m. in our Training Facility. For further information, please contact Georgia Bohm at x8200.

Voice Mail -- Voice-Mail Training conducted by Maricopa County Telecommunications is available for anyone interested. If you missed the training conducted when the system was installed, or if you want a refresher course, you may sign up for either of the following one-hour classes planned by Telecommunications: *Tuesday, August 3, 1:00 - 2:00 p.m.*, OR *Wednesday, September 1, 4:00 - 5:00 p.m.* The classes will be held in the Human Resources Office, 2nd Floor, County Administration Building. To register, please call Georgia Bohm at X8200 at least one week before the class date. If you are unable to attend these classes and are interested in the training, you may check out our videotape "County Voice-Mail Training" from Heather Cusanek in our Training Division.

TRAINING AT A GLANCE

DATE	TIME	TITLE	LOCATION
Wed., August 11	2 p.m. - 4 p.m.	*Support Staff Training "DUI versus Reasonable Drinking"*	MCPD Training Facility
Wed., September 15	10 a.m. - 11 a.m.	*Support Staff Training on Appeals (to be titled)*	MCPD Training Facility
Fri., September 24	(to be announced)	*"Cultural Diversity & Client Relations"*	Board of Supervisors Aud.
Fri., October 22	8 a.m. - 5 p.m.	*"Trial Practice Seminar"*	Holiday Inn Crowne Plaza
Fri., December 3	(to be announced)	*Criminal Code Revisions (to be titled)*	Board of Supervisors Aud.

Personnel Profiles

Mara Siegel and Christopher Johns have been certified as Criminal Law Specialists by the Arizona State Bar's Board of Legal Specialization. The certification process requires passage of an examination, additional CLE, recommendations by colleagues and judges, criminal law practice for at least four years, as well as the demonstration of the ability to handle a wide variety of criminal cases. Of 12,000 Arizona attorneys, only 650 are certified in seven different areas of law, with approximately 80 of these attorneys certified as criminal law specialists. Mara and Christopher join Dan Patterson as criminal law specialists in our office.